IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

MISC. PETITION NO. 13 OF 2004

Pradeep R. Mafatlal and Ors. ...Petitioners

A. Thakkar with S. Diwan for the petitioner.

Mr. Sohanraj Chode in person.

Mr. S.R. Khanna, C.A. in person.

CORAM: S.U. KAMDAR, J.

DATE : 8TH AUGUST, 2005.

JUDGMENT :

1. The present petition is filed by the trustees of a public charitable trust known as Pransukhlal Mafatlal Hindu Swimming Bath and Boat club Trust.

By this petition the petitioners are seeking order from this court of sanctioning the proposed amendment of the existing scheme of the said trust. Some of the material facts of the present case can be briefly enumerated are as under :

2. The Pransukhlal Mafatlal Hindu Swimming Bath and Boat Club Trust was constituted pursuant to a Declaration of Trust dated 18th August, 1939 made between Mafatlal Gagalbhai, Sunderdas Morarjee and Dwarkadas Champsey therein called "the parties of the First Part" of the one part and Mafatlal Gagalbhai and others therein called "the Trustees" of the Other part. Under the terms and conditions of the said trust an institution called "The Pransukhlal Mafatlal Hindu Swimming Bath and Boat Club" has come into existence. The said trust is duly registered as a public charitable trust with the Charity Commissioner under the provisions of the Bombay Public Trust Act, 1950.

3. A suit was filed in this court by Vrandavan Purshottam and Damodar Gordhandas being Suit No.

1440 of 1984 against Navinchandra Mafatlal and Others who were the then trustees of the said trust. On 9.11.1944 this court has framed a scheme for management and administration of the trust. Under the said scheme the management and administration of the trust was vested in the trustees and they were required to carry on the trust activities in accordance thereof.

4. Subsequently another suit filed being Suit No. 920 of 1951 pertain to certain interpreation and implementation of the said scheme. The said suit was filed by Mohanlal Narottamdas Mehta and five others against the Advocate General of Bombay. In the said suit a decree was passed on 10.12.1951 by this decree the court finanlised the scheme and interpreted the said scheme. By the said decree dated 10.12.1951 ultimately a final scheme has come into operation. Clause-51 of the said scheme as finalised in the aforesaid decree provided that the trustees or the managing committee will be at liberty to apply to the High court by way of petition for modification, alterations or

amendments or additions to the provisions of the said scheme. The said clause-51 of the scheme reads as under :

> 51 The trustees or the Managing Committee for the time being shall be at liberty to apply to the High court of Judicature at Bombay by petition for such modification, alterations or amendments of or additions to the provisions of this scheme or for such directions with reference to the carrying out of the provisions thereof as might be necessary or convenient."

5. It seems that from time to time thereof the scheme has been the subject matter of modification and alteration. One of the proceedings filed was Misc. Petition No. 31 of 1988 under which certain alterations in the scheme were formulated. By order and judgment dated 21/10/1997 passed by this court, this court altered the scheme of the said trust and the said altered scheme has come into effect from 21/10/1997. Thereafter another petition was filed being Misc. Petition No. 52 of 2000 and the trust proposed further alteration to the said scheme and by an order dated 13.10.2000

passed by this court this court has allowed the said proposed alterations.

6. It is the case of the petitioner that the club has around 37,264 members which has been ever increasing and various other facilities are added. It is the case of the petitioner that the said trust is running basically for the benefit of middle class members of the public and was constituted with its main object to advance the cause of physical culture and/or providing the need of swimming pool and other sports activities. It is further the case of the petitioner that a very nominal rate is charged to the members for the purpose of use of the said facilities. It is the case of the petitioner that because of the various reasons the trust scheme is required to be modified and/or amended. Accordingly the managing committee has in its meeting held on 14.7.2004 passed a resolution inter-alia proposing the various modifications and amendment to the said scheme and the Managing Committee has also authorised the trust to approach this court for the purpose of

necessary orders to alter the said scheme and make the said altered scheme operative from the date of the order passed by this court. Some of the grounds which are set out by the petitioner in the petition insupport of the amendment to the scheme is inter-alia that those persons who are scheme members i.e. persons who are having age of more than 65 years and above as on 1.1.2005 should be given a discount to the extent of 50% in payment of the subscription and other fees payable inrespect of the facilities offered by the club members. This proposal is made with a view that most of the persons who are retired members and are not having sufficient income to make payment towards the said fees should be granted concession. The aforesaid proposal is sought to be incorporated by adding new Clause, Clause 3(bbb).

4. It has been further provided by amendment of the Clause-13(c) of the said scheme that the disciplinary provisions are sought to be altered because it has been found that there is a total

indiscipline and the members are indulging in bad behaviour against the interest of the trust which has resulted in great loss and or harm to the reputation of the trust and therefore to deal with it effectively that the aforesaid terms in the said provisions are sought to be amended. It has been also suggested that Clause-15 of the said scheme which provides for only the appointment of male lineal dependents and of the founder trustees be altered and inplace of male lineal descendants any member of the family should be interpreted. Similarly, in so far as the election of the managing committee members are concerned it has been proposed that the restriction that no person can be secretary for more than three times and or managing Committee members for more than six times be done away with and the person must be permitted to be eligible for election for as many occasions as they deem fit. The aforesaid proposals of the proposed amendment are set out at Ex.C to the present petition. Two of the persons who have appeared before me one Mr.S.R. Khanna Chartered Accountant and another Mr. Sohanraj Chode advocate

in person have tendered their written submissions opposing the present petition. It is inter-alia contended that firstly this court has no jurisdiction to entertain and try the present petition. It has been contended that once the provisions of the Bombay Public Trust Act, 1950 has come into operation then in that event the Charity Commissioner has exclusive jurisdiction to entertain and try the present application for amendment of the scheme under Section 50 of the Bombay Public Trust Act, 1950 and therefore this court cannot go into the proposals which are put forward for amendment of the scheme by the petitioner. The aforesaid issue which is an issue of law has been dealt with by me in my judgment in Misc. Petition No.4 of 2000 in the case of Mr. Minoo Rustomji Shroff and Ors vs. Charity Commissioner and Ors decided on 1.4.2005 in which while dealing with the aforesaid contention I have held as under :

6 The learned counsel Ms. Sethna appearing for the respondent no.2 has

interalia contended that this court has no jurisdiction to entertain the petition. He has taken me through the various provisions of Bombay Public Trusts Act, 1950 particularly the definition of the word "Court" under s.2(4), the provision of s.50, s.50(A), s.52, s.85 and s.86 of the Bombay Public Trust Act, 1950. It has been interalia contended that the word court defined by the provisions of s.2(a) means in the Greater Bombay, the City Civil Court and elsewhere, the District Court. It has been further contended that the application by way of Miscellaneous petition would not lie in this court because for framing of a scheme or variation or alteration therein an application should be made to the Charity Commissioner u.s.50 clause (iv) (j) of the Bombay Port Trusts Act, 1950 and thus, he alone would have jurisdiction to alter, amend, verify or form a new scheme for the election of trustees of Parsee Panchayat. It has been contended that u.sec.52 the provision of s.52 and 93 of Civil Procedure Code has been repealed and they cease to apply to the Public Trusts and therefore the present proceedings initiated in this court is totally beyond the jurisdiction of this court and cannot be entertained. This issue of jurisdiction has also been supported by other intervenors.

7. Mr.Sethna has relied upon the Judgment of the Gujarat High Court in the case of Jai Ranchhod Bhogilal Sevan and etc. v. Thakorelal Pranjivandas Jumkhawalal and others etc. reported in AIR 1985 Gujarat 1 Full Bench Pg.1 as well as the Judgment in the case of Yasinmian Amirmian Faroqui & Ors v. I.A.Shaikh & Ors. reported in Gujarat Law Reporter 1977 Pg.54 and has contended that the provision of s.92 and 93 of the Civil Procedure Code would not applicable once the provision of s.52 of Bombay Public Trusts Act 1950 is enacted specifically lays down that the provision of said Civil Procedure Code

shall not apply in the case of the public trust and the trusts which are governed by the provision of Bombay Public Trusts Act, 1950.

8. The learned counsel Mr.Dada appearing for the petitioner has on the other hand drawn my attention to the provisions of s.92 and 93 of Civil Procedure Code, 1908. Mr.Dada the learned counsel for the petitioner has also drawn my attention to the Judgment of the Apex Court in the case of Raje Anandrao Vs. Shamrao and others reported in AIR 1961 SC 1206 particularly para 6 to 10 of the said judgment and has interalia contended that this court will have a power to modify the scheme if the same is settled in a suit by passing a decree reserving thereunder right to apply for alterations and modifications of the scheme much prior to the provision of Bombay Public Trusts Act 1950 are enacted. It has been contended that the provision of s.52 of the Bombay Public Trusts Act, 1950 would only apply if the suit is filed for settlement of the scheme subsequent to the amendment of the Act but in a case where the scheme is already settled u.s.92 and 93 of the Civil Procedure Code and the scheme reserves its power to further act or modify the scheme in such cases the provision of s. 92 and 93 will continue to govern the situation and provision of s.52 of the Bombay Public Trusts Act, 1950 r.w s.50 (4) would not be applicable. Though the aforesaid judgment of the Apex Court do not consider the provisions of Bombay Public Trusts Act. The said judgment of the Apex Court has been followed by the learned Single Judge of this Court in the case of Petitioner itself and the learned single Judge has in his judgment delivered in Miscellaneous Petition No.270 of 1969 decided on 2.4.1970 has held as under:

"Mr.Zaiwala on behalf of Mr.B.K.Karanjia has raised a preliminary contention to the hearing of this petition. He urged that this Court has no jurisdiction to entertain and dispose of this

petition. He submitted that the proper remedy for the Trustees is to file a suit in accordance with the provisions of section 50 of the Bombay Public Trusts Act, 1950. He also opposed the amendments suggests by the Trustees on the ground that they did not give much wider franchise to the members of the Parsee Committee. He said that the members of the Anjuman Committee should be elected on the basis of adult franchise by the members of the Parsee Committee. However, he suggested that such an amendment would be a substantial alteration f the scheme sanctioned by this court and the proper remedy of his client would be to adopt appropriate legal proceedings as may be permitted by law. So far as the Charity commissioner is concerned, he has submitted to the orders of the Court and he has no objection to the petition being allowed.

The first question that has to be considered is whether this court has jurisdiction to entertain this petition. Clauses 88, 90, 91, 94 and 95 of the Scheme sanctioned by this Court provide for the procedure to be adopted for modification or alteration of the Scheme. Under clause 88 it is competent to a majority of the Trustees at any time, to submit to a judge of the High Court in chambers for sanction any proposals for alteration in or additions to the provisions of this scheme. This clause further provides that the trustees shall give notice to the Advocate General, which having regard to the provisions of the Bombay Public trust Act has to be given to the charity Commissioner. Clause 90 provides for the manner in which such an application has to be made. Clause 91 provides for publication of such an application in the newspapers. Clause 94 gives liberty to the Judge in chambers to permit any members of the Parsee Committee to appear in person or through Counsel or attorney. Clause 95 is a consequential clause and it says that any alteration or modification that is sanctioned by the Judge in chambers shall form part of the scheme. Thus, under the scheme as framed by this Court, the High Court has

jurisdiction to entertain a petition for alteration or addition to the provisions of the scheme."

9. In the aforesaid Judgment the Single Judge of this court has followed the judgment of the Apex Court and has held that the provision of s.50 of Bombay Public Trusts Act, do not apply to the cases of a kind where the scheme is sought to be altered by virtue of the power reserved under the scheme while passing a decree prior to the enactment of Bombay Public Trust Act, 1950. It has been held that irrespective of the provisions of the said Bombay Public Trust Act this court alone shall have jurisdiction to modify the scheme which is settled by it while passing a decree.

10. In my opinion in the view of the Judgment of the Apex Court where the provision of s.92 and 93 has been considered and the Judgment of the Single Judge of this court which has been decided following the apex court judgment in the case of Raje Anandrao (Supra) I am of the opinion that the issue of jurisdiction to entertain the present Misc. Petition and decide the same is squarely and directly covered and therefore, I am required to hold that notwithstanding the provisions of s.52 of the Bombay Public Trust Act, 1950 in respect of the scheme settled by this court under the decree prior to enactment of the said Act if it reserves a right to alter or modify the scheme then this court shall continue to have jurisdiction to alter, modify or verify the scheme but shall have no jurisdiction to replace and/or substitute the scheme in its entirety.

7. The next contention which has been advanced by the learned Chartered Accountant and the advocate both appearing in person is that the scheme which is proposed is not in the interest of the trust and this court should either reject the same or modify suitably in the interest of the trust. it has been contended that the provisions providing for expulsion of the members as proposed should be modified so as to provide for a grading punishment rather that straight away expulsion of the members from the membership of the trust. It has been also contended that the capping of the election of the managing committee trust and the Secretary being six and three times respectively which is sought to be done away by modification of Clause 19(dd) and 19(ddd) should be rejected and the capping cover should be retained so as to avoid of the monopoly in the managing committee trust, which will be in the interest of the trust. Insupport of the aforesaid contention the learned counsel has relied upon the judgment of the single judge of this court in Misc. Petition No. 31 of

1988 decided on 21.10.1997 in which the original clause 30 was sought to be amendmed. In original Clause 30 no limit was prescribed on the number of times a person can be elected as a managing Committee member or a secretary. The learned counsel for the respondent appearing in person has further contended that he appeared before the learned judge and the learned judge modified the scheme so as to avoid capping on the number of times a person can be elected . I have perused the order dated 21.10.1997 passed by the learned single judge. I do not find any such discussion that the objection of the respondent to provide for capping was taken into consideration. The modification which was proposed to Clause 30 itself provided a restriction that no person of the club can be a member of the managing committee for more than 6 times. Page 13 of the judgment in para 7(k) provided that no person can be a member of the managing committee for more than six times as a proposal of the trustees to amend the scheme. In any event both modification or alteration of the scheme are the issues in a absolute domain of the

trustees. If the trust have proposed certain modification then the advisability thereof cannot be questioned by the court nor can propound its own scheme for the purpose of modification in place and instead of the scheme proposed by the trust. I have in my aforesaid judgment in the case of Mr. Minoo Rustomji Shroff and Ors (supra) while following the division bench judgment held as under :

> 13. However, the 5 of the trustees who are in majority have proposed only a minor modification to the scheme keeping intact the original system of donor member being made direct members to the Anjuman Committee on the strength of their donation. It has been contended by the learned counsel for the petitioner that the changes to the scheme ought to be gradual and therefore as and by way of part modification they have put forward the present proposal that the donation amount should be enhanced from Rs.15000 to Rs.25000 and ratio of elected member of the Anjuman Committee of 1:1 i.e. one donor member to one elected member be further modified to 1 donor member to 2 elected members i.e.1:2. Apart from the aforesaid contentions the intervenor and Respondent have also contended that making this kind of election process is totally unreasonable and impracticable and it merely requires large number of members to be elected to the Anjuman Committee by the General Parsees whose name appears on the General Register. It has been contended that it is high time that the court should refuse all

the changes suggested by the majority of trustees to be incorporated by this court in modification of the said scheme. On the other hand the learned counsel for the petitioner has drawn my attention to the Division Bench Judgment in Appeal No.1137 of 1987 in Misc.Petition No. 137 of 1985 in which the identical issue came up for consideration Paragraph 12 and 13 of the judgment are reproduced here under:

"12. We do not propose to accept the invitation extended to us by Mr.Sethna to radically alter the Scheme for the election of the Trustees of the Parsee Panchayat of Bombay. Under clause 90 of the scheme, proposals for the modification of the Scheme should be placed before the Court by a majority of Trustees. In the alternative, such proposals may come as a result of a requisition made by a majority of the Anjuman committee under Clause 98. Any proposal for such alteration or addition may be sanctioned by the Judge in chambers and thereafter would be incorporated and form part of the Scheme. In our view clause 98 does not give to this court a completely free hand to frame a fresh Scheme altogether which may not be supported by the majority of Trustees or a majority of the members of the Anjuman committee. In our view, this would not be a correct interpretation of clause 98. Even if we assume that the Court has powers to amend or alter the proposals before it submitted by the Trustees or by the members of the Anjuman committee, the Court should be slow in exercising such powers. It would not therefore, be proper for us to ignore the proposals placed before us by the Trustees and frame an altogether different scheme as suggested by Mr.Sethna.

13. Undoubtedly, there can be various types of Schemes for election of the Trustees. Two views are possible on whether the Donor Members should or should not be allowed to vote and on the extent of such a right to vote. We are however, not her to consider the formation of a Scheme in

a vacuum. The proposal before us which is backed by the majority of the Trustees seeks to increase the limit of donations which would qualify a donor for being on the Donors' Register. The modifications which are advertised on 20th November 1988 appear to us to be reasonable. We accordingly give our sanction to the modifications as advertised on 20th November 1988, which are already set out earlier. The modifications are set out in clauses 1, 2 and 3 of the advertisement set out above."

14. In the aforesaid Judgment of the Division Bench the power of the court for modification of the scheme is circumscribed by holding that under clause 98 of the scheme the court has no power to completely frame a fresh scheme altogether which is not supported by the majority of trustees or majority of members of the Anjuman Committee. It has been also held that even though two views are possible about the right to vote of donor members still unless the proposals are brought forward before the court by the majority of trustees this court would not be entitled to modify such a scheme. In the present case before me the majority of trustees have brought the proposal only of a minor modification to the said scheme as indicated herein above Hence, it is not possible for me to accept any of the objections or contentions raised by respondent no.2 and 3 and/ or Intervenor in the present proceedings. However, I would like to make it clear that the proposal providing for 21 years for a person to be a trustee of a trust must obviously mean that a number of years for which a person can be a trustee of a Parsee Panchayat ought not to exceed 21 years in any manner whatsoever.

7. In light of my aforesaid judgment which was based on the division bench judgment of this court it is not possible to accept the suggestions of the intervenors and caveators to modify the proposal of the trustees suitably before the the same is incorporated in the scheme. I do not find any compelling reason to substitute the proposal put forward by the trustees. The grounds which are set out in para-9 of the petition indicate that the proposal put forward by the trustees are put forward bonafide with the intention for effective implementation of the scheme prepared by the said trust. In the aforesaid circumstances I allow the present petition in terms of prayer clause (a) and fix the effective date as of 15.8.2005. Petition disposed off accordingly. No order as to costs.

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